IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 210 of 2002
To
CRIMINAL APPEAL No. 276 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAMNADAS NARSINHDAS SUTHAR ASSISTANT OCROI OFFFICER AND - Appellant
Versus
ABRAR SYNTHETIC (PARTNERSHIP FIRM) & 5 – Respondents

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Appearance :
MR PRASHANT G DESAI for Appellant: 1,
NOTICE SERVED for Respondents : 1 - 2,4 - 5.
MR AJ SHASTRI for Respondent : 3,
MR MA PATEL ADDL PUBLIC PROSECUTOR for Respondent : 6,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 16/11/2006

COMMON ORAL JUDGMENT

1. Heard Shri P.G. Desai, learned counsel for the appellant – Surat Municipal Corporation and Shri A.J. Shastri, learned counsel for the respondent Nos. 1 to 5 and Shri Patel, learned Addl.P.P. for the respondent No. 6 – State of Gujarat.

2. The appellant – Surat Municipal Corporation, through its Assistant Octroi Officer has preferred the present Criminal Appeals under Section 378 of the Code of Criminal Procedure, 1973 (herein after referred to as 'the Code' for short) challenging the order of acquittal dated 30.6.2001 passed by the learned JMFC (Mun.), Surat in Municipal Cases Nos. 4536 of 1993 to 4602 of 1993, whereby, the respondent Nos. 1 to 5 – original accused have been acquitted of the offences under Rule 13(1)(e), 13(2), 28(1), 28(2)(A) of the Octroi Rules and under Section 398 of the B.P.M.C. Act.

3. This group of Criminal Appeal Nos. 210 of 2002 to 276 of 2002 have arisen out of Common Judgment and order passed in Municipal Cases No. 4536 of 1993 to 4602 of 1993 and as the complainant and accused are common in all these cases, the appeals were club together and they were heard together. This Court

(Coram: C.K. Buch, J.) on 11.2.2002 granted Special leave and admitted the appeals. As the parties and facts are common and impugned judgment is also common, these group is being heard and the same is being disposed of by this common judgment and order. The trial Court had consolidated all the 67 cases and heard the same and disposed of the same by common judgment as there were common witnesses and common evidences were adduced, Ex.60 order was passed consolidating all the cases.

4. The accused No. 1 was Partnership Firm and accused Nos. 2 to 5 were its Partners. The accused No. 1 is a firm engaged in the business of Yarn. The accused No. 1 is authorized dealer of J.K. Synthetics Ltd. and it is said to have imported goods in Surat city. The Octroi Officer of Surat Municipal Corporation demanded bills from the accused vide his letter dated 9th March, 1993. As the said letter was not replied, the requisition forms under Rule 21 of the Rules came to be issued upon the accused. As per the case of the appellant, even those requisition forms also were not received back from the accused duly filled in and as the SMC did not receive the information regarding import in the relevant period, the Municipal Case Nos. 4536 of 1993 to 4602 of 1993, total 67 cases came to be filed on 2.11.1993.

After recording the plea of denial of the accused, which came to be recorded from Ex.15 to 19, the trial commenced. After recording the evidences of the prosecution, further statement of the accused came to be recorded under Section 313 of the Code. The accused denied the case of the prosecution and stated that false cases have been filed against them. The complainant has also filed written submission at Ex.126. The trial Court framed three points for determination namely (i) Whether the prosecution proves beyond doubt that accused No. 1 is a Partnership Firm and accused Nos 2 to 5 are its Partners and whether they are carrying on business of Yarn and imported yarn in Surat city? (ii) Whether the prosecution proves beyond reasonable doubt that accused have committed breach of provisions of Rule 13(1)(e), 13(2), 28(1), 28(2)(e) of non payment of Octroi and non filling up of requisition forms and committed an offence punishable under Section 398 of the BPMC Act? (iii) What order?

The point No. 1 is answered in affirmative. The point No. 2 is answered in negative and point No. 3 is answered as per court's order.

After discussing the evidence on record, the

trial Court has acquitted the accused of the charges vide its common judgment and order dated 30th June, 2001.

5. Learned counsel appearing for the appellant Shri Desai has vehemently submitted that accused have clearly violated the provisions of Octroi Rules by non paying the Octroi. The accused were called upon to furnish the details in respect of the payment of Octroi amount. The accused did not care to reply to the letter issued by the Corporation. Shri Desai has submitted that Octroi Officer had addressed a letter dated 9th March, 1993 calling upon the accused to furnish the information and proof of payment of Octroi. As the said letter had remained unanswered, the requisition forms under Section 21 of the Rules came to be issued and as per the provisions of Section 21 of the Rules, non-furnishing details in a requisition forms in itself is an offence and therefore, the decision of the trial Court deserves to be quashed and set aside and as it is clear that the goods mentioned in Ex.119 has entered precincts of SMC and as there is no evidence to show that the Octroi was paid on that, the prosecution have established their case beyond doubt and therefore, the charge ought to have been held to be proved and appropriate penalty ought to have been imposed.

6. Shri Shastri, learned counsel appearing for the respondents – original accused has submitted that this being an acquittal appeal, unless and until it is established by the appellant that the findings and reasoning of the trial Court are so perverse as to resulting into miscarriage of justice, no interference is called for. Shri Shastri has submitted that the entire case of the prosecution is hinging upon the so called statement which was said to have been received from J.K. Synthetics, whose goods are ordinarily imported within the city limits of Surat Municipal Corporation by accused but that statement in itself cannot be said to have been a proof of the goods mentioned therein entered in the precincts of the SMC. In order to fastion the criminal liability upon the dealer and importer, it is the boundant duty cast upon the Municipal Officer to prove that the goods in question were actually imported. In the instant case, no goods have ever been noticed entering Surat City Limit by anyone. It is actually a statement which they have received from J.K. Synthetics, which disclosed that the goods stated therein have been lifted or purchased by the accused. That statement does not show that the goods in fact have been delivered within the limits of SMC. On the contrary, the communication of J.K.

Synthetics that goods were delivered of their predecessor of the factory premises and thereafter, they are nowhere responsible. The statement does not disclose that the goods were in fact reached within the limits of the appellant Corporation. Shri Shastri, therefore, submitted that the decision of the trial Court deserves to be upheld.

7. This Court has perused the record and evidences on record and heard the counsels for the respective parties at length.

8. This Court inquired of Shri Desai that is there any evidence on record, which may even remotely indicate that the goods mentioned in the statement issued by J.K. Synthetics had ever entered in the limits of Surat Municipal Corporation. Shri Desai could not point out any such evidence. Shri Desai submits that the requisition forms ought to have been filled in and because of non-filling of the requisition forms, in is itself is an offence. Had the requisition forms duly filled in, then, the details would automatically have come on record, which would have indicated the evasion of Octroi. Shri Desai's plea appeared to be misconceived. Shri Desai could not show any evidence either oral or documentary showing that the requisition forms, in fact issued, were

received by the accused. It is stated that one peon Shri Jhala was deputed to serve the requisition forms upon the accused. The Court had exhibited those copies only in respect of Shri Jhala's signature on the requisition forms but that itself cannot be said to be a proof that the forms were received by the accused. Exhibiting of these documents, assume to be a correct, then also, it cannot lead to demonstrate beyond doubt that the accused did receive the requisition forms. When the fact of receipt of requisition forms by the accused itself has not been established by the prosecution, there is no question that accused be held liable for non-filling of the requisition forms and submitting to the Corporation. So far as the import of goods without paying Octroi is concerned, as it is stated herein above, the Corporation cannot said to have been proved that the goods were actually imported as it is stated.

9. The factum of offence and alleged act said to have been started only after the non-submitting of the requisition forms alleged to have been issued and received by the accused – respondents. The correspondence made earlier would have its relevance only in context of issuance of requisition forms. The earlier form therefore, will have to be viewed in its appropriate perspective. As per Rule 21 of

the Rules, the Commissioner or the Officer authorized in this behalf by the Commissioner, on being satisfied that it was essential in the interest of municipal revenue to issue requisition Form No.VII, calling upon the owners of the goods that are imported and non-responding itself also an independent offence, attributing penalty. In other words, the evasion of Octroi in the present case was dependent upon the information that might have received by the Corporation in response to the requisition forms issued. The requisition forms, whether have been received by the accused, therefore, being an important question, required appropriate appreciation. In this context, it would be appropriate to appreciate the depositions of the witnesses total in number three, who have been examined by the prosecution.

10. PW-1 Hasmukhlal Nanabhai Panwala, is a complainant, whose depositions have been recorded at Ex.69. This witness has talked about the issuance of letter prior to issuance of requisition forms. Those letters, as per his submission, appear to have been issued either by Registered AD Post or UPSC or also through courier and hand delivery. The postal acknowledgment due in respect of earlier letters have been exhibited at Ex.82 and 83. However, those

acknowledgment dues did not bear the signature of any of the accused. The signature is that of one Shri Mohankumar. No attempt is made on the part of the prosecution to establish that those letters have in fact received by any of the accused. Therefore, the finding of the trial Court in respect of non receipt of these letters deserves to be upheld. It is important to note at this stage that earlier letters were sent through three modes namely in person by hand delivery, by Registered AD Post and by Courier. However, the requisition forms, which is an appropriate mode, having sanction behind it, was sent through Peon namely Shri Sureshbhai Jhala. Now, as per the deposition of this witness, those requisition forms were not accepted by the accused and therefore, the peon had made report, which was produced along with the covers. The report is at Ex. 94. It deserves to be noted that the said report is exhibited as the signature thereon was identified by the witness, however, the trial Court has by way of abundant caution, exhibited them as the signatures have been identified by the witness. It also deserves to be noted that the author of the report i.e. Sureshbhai Jhala, who had carried requisition forms, had not been examined. It is therefore, the case of the defence from the very beginning that those requisition forms had never been received by

any of the accused. The receipt at Ex.98 also appears to have been signed by one Dhaniram, in whose respect, there is no evidence as to whether he was an employee of the accused or was in any way related to any of the accused. The only person, who can through light was the Peon - Shri Jhala, who has also not been examined by the prosecution and therefore, the vital aspect has remained unanswered and remained to be proved.

11. The another Witness PW-2 Jitendrabhai Dahyabhai Nayak is Flying Squad Inspector, who was the author of the letter dated 9.3.1993. His testimony also can well be said to have no avail to the prosecution.

12. PW-3 – Maheshchandra Natwarlal Bhoywala is an author of letter at Ex. 116, whereunder, the information was sought from the J.K. Synthetics, Ankleshwar, wherefrom, it is alleged that the goods were imported in the precincts of Surat Municipal Corporation. This witness has produced letter of J.K. Synthetics at Ex. 117 and 118 and the statement at Ex.119, which indicate that goods were sold by J.K. Synthetics to the accused on 1.4.1992 to 28.2.1993. In his cross-examination, this witness has not stated as to whether he had actually inquired that the goods came within the limits of Surat Municipal Corporation. Ex. 119 is the document

relying, whereupon, the complaints, 67 in numbers, came to be filed. This document in itself cannot be said to be a proof of goods being imported in the precincts of Surat Municipal Corporation. At the best, this document can be said to be a document showing that the goods were purchased by the accused but it would be unsafe to stretch further and infer that these goods might have entered the precincts of Surat Municipal Corporation and based upon such inference, to fastening of criminal liability would be very unjust and improper.

13. The Statement alleged to have been received from the Sales Tax Department, indicates that the amount of sale and purchase on the part of the accused. That statement also is covering a larger period then, the period for which, the allegation is made for evading the Octroi. Only the third raw in said statement appears to be transaction falling in the year, in which, the accusation is made for evasion of Octroi but that statement itself without anything further cannot lead to raise inference that those goods were brought within the precincts of Surat Municipal Corporation. As it is stated herein above, it would amount to treading on a ground, which has no basis and therefore, on such a ground, no criminal liability can be fastion on the accused.

The trial Court has therefore, rightly acquitted the accused of the charges levelled against them.

14. This being an acquittal appeal, this Court is mindful of the fact that ordinarily the order of acquittal is not required to be interfered unless and until it is aptly demonstrated by the appellant that findings and reasonings adopted by the trial Court for recording acquittal are so perverse as to result into miscarriage of justice in absence of any such plea, the finding and order of acquittal needs no interference. In the instance case, the entire records show that the reasoning and findings of the trial Court are just and proper and even if there was another view possible, the same could have not been taken in the acquittal appeal under Section 378 of the Code.

15. In view of the aforesaid discussion, this Court is of the view that the order of acquittal dated 30th June, 2001 passed by the learned JMFC (Muni.), Surat in Criminal Case Nos. 4536 of 1993 to 4602 of 1993 does not call for any interference and the Appeals therefore, deserve to be dismissed and they are accordingly

dismissed. Registry is directed to keep copy of this common oral judgment in each of the Appeals.

(S.R.BRAHMBHATT, J.)

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